

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

#### SELECT COMMITTEE ON EDUCATION FUNDING

Call to Order: By Chairman Ray Peck, on February 2, 1989, at  
3:15 p.m.

#### ROLL CALL

Members Present: Chairman Peck, Vice Chairman Eudaily, Rep.  
Gilbert, Rep. Glaser, Rep. Grinde, Rep. Kadas, Rep. Schye

Members Excused: None

Members Absent: Rep. Harrington

Staff Present: Madalyn Quinlan, Andrea Merrill, Dave Cogley,  
Jeanne Flynn

Announcements/Discussion: Notice of the school funding bill by  
Rep. Kadas (HB 575) is Thursday, February 9, 1989.

#### Discussion of Supreme Court Ruling on the Unconstitutionality of the Public School Financing System.

Beda Lovitt, Attorney for the Office of Public Instruction stated that the Court did affirm the Loble decision that the system of school funding is unconstitutional. The "narrower ground" referred to in the Court's opinion seems to center on the fact that the Court did not rule on whether education is a fundamental right in the state, nor did the Court rule on whether any right of equal protection is infringed by the system of funding.

Ms. Lovitt said the Court did agree with the Board of Public Education's request to modify the language in the Loble decision to clarify the status of the accreditation standards as a minimum component of a "basic system of free quality . . . education". The Court did not tell the Legislature what "percentage" of state or local funding would be acceptable, and, in fact, did not give specific directions in any area. The Court did say the PL 874 money could not be used in equalizing school funding until the state system meets the federal "equity" test.

She said the Court retained jurisdiction of the case until July 1, 1989, and on that date the holdings of the opinion become effective for the commencing school year.

Rep. Peck asked are caps on school spending addressed? Ms. Lovitt said no.

- Rep. Peck asked what significance does the ruling have on the accreditation standards? Ms. Lovitt said they changed the language "in no way define" to "do not fully define". I don't know quite the history in those arguments about accreditation.
- Rep. Peck asked what does the Court mean by retaining jurisdiction until July 1, 1989? Ms. Lovitt stated that it is unclear language, but if you can read this in with what Judge Loble said about reserving jurisdiction, he gave "the Legislature time to search for and present an equitable system of school financing."
- Rep. Peck said the Attorney General said he may ask the Court for further clarification on some points.
- Rep. Schye asked where they modify the jurisdiction and take control until July 1, 1989, then does Judge Loble have jurisdiction again after July 1, 1989? Pat Melby, attorney-lobbyist for the plaintiff districts said a party to the suit may have to ask the Court to review any legislative plan before July 1, 1989.
- Rep. Peck asked Mr. Melby if he finds any language in this that has to do with caps? Mr. Melby: No, I don't. Other significant features of the opinion include the fact that all branches and all levels, the state, county, and school districts, must comply with the obligation to provide equal educational opportunity.
- Rep. Peck said does anything in the opinion suggest that more dollars must be put into the system? Mr. Melby said the Court says a "quality system" must be funded equitably. When we refer to the accreditation standards the Court mentioned that many wealthy districts were spending more money and had curriculum options and other amenities that the poor districts didn't have, but these aren't frills. These are part of a quality system of education.
- Rep. Peck asked what does the Court mean by retaining jurisdiction until July 1, 1989? Greg Petesch, Director of Legal Services, Legislative Council said that on July 1, 1989, the current system becomes unconstitutional and a new system must be in place. The standards are one component.
- Rep. Eudaily asked do you think that a plan could be phased in, rather than be "in place"? Mr. Petesch said that is unclear, the existing system as it exists cannot remain on the books. A phase-in was not ruled out. Mr. Melby said the plaintiffs would be agreeable to a phased-in plan, but the major components must be in place as soon as possible. The first year could include schedule increases and full funding of special education costs.

Rep. Peck said the Appropriations Committee just voted to add \$6 million for special education each year of the coming biennium.

Rep. Kadas asked if the legislature passes a plan that is phased in over four or five years, and the plaintiffs like it, what happens then. Do we put it into effect? Mr. Melby stated that a party not satisfied with an enacted legislative plan could ask the court for a review of the legislation. At that point the court could extend its jurisdiction until the contested issues are settled, but that may interfere with distribution of funding for FY 1990.

Rep. Peck asked Mr. Petesch if he would agree that a concerned party would have to start in the District Court? Mr. Petesch said yes, after July 1, 1989.

Rep. Kadas asked what will happen if we put in place a system, the plaintiffs are not satisfied and appeal it and the court sides with them? Mr. Petesch said a special session.

Rep. Kadas asked what if the legislature refuses to go into session? Mr. Petesch stated that there will be no school funding system.

Nancy Keenan, State Superintendent of Public Instruction said the Court could also decide on specific remedies if it is dissatisfied with a plan.

Rep. Gilbert asked do you think the opinion says that we have to bring everyone down to meet the equity standard? Mr. Melby said no. The Constitution requires provision of "a quality system", and the opinion says one which is beyond the accreditation standards.

The opinion is "narrowed" only because the Court looked at Article 10 Section 1 and found the funding system unconstitutional on those grounds. The Court didn't have to go further to rule on the "equal protection" clause of the Constitution.

Rep. Kadas asked if education is not a fundamental right and because of that the state doesn't have to provide the "compelling state interest" for the way it funds schools, what criteria does the state have to meet? Mr. Petesch said that since the opinion did not find education to be a fundamental right, there is no need for the state to have a "compelling state interest" for enacting certain reforms. It gives the Legislature more leeway in a plan. It may mean, however, that the plan must be balanced against a student's right to equal protection of the law.

Rep. Glaser asked if he indicated that the school districts may be a subdivision of state government. Mr. Melby stated that

they are a political subdivision of the state. The Supreme Court in its decision said that the guarantee to provide educational opportunity is binding in all branches of state government.

Rep. Glaser asked if that is the case, how do you fit that in with Article 10, Section 8? Mr. Melby said he believes that there is no inconsistency. There is nothing contrary between those two constitutional provisions to equalize school funding and local control.

Rep. Glaser said we have basically two problems here, one is a community's willingness to tax itself for better education, and the other one is one community's difference from another in taxable value per ANB.

Mr. Melby said you are talking about the basis of why there is disparity between school funding and why there was a lawsuit. There are really three components to the lawsuit, the expenditures per ANB, the wealth of a district, the tax effort of the district. Those are the components the District Court looked at in determining that there was an unconstitutional funding system.

Ms. Lovitt stated that is from the Findings of Fact in the District Court decision that the Supreme Court used to address that issue and talk about the wealthier district.

Mr. Melby said the opinion says, "this illustrates the fact that wealthier districts are able to rely to a greater extent on the voted levy to generate levies to the general fund . .". The state did not challenge any Findings of Facts of the District Court.

Rep. Eudaily said the spending disparity among the state school districts translates into a denial of equality of educational opportunity. Is that a more important Finding there than the wealth disparity? Mr. Melby said they are all tied together, you can't separate them out. The expenditures have to do with that the three parts to the system.

Rep. Kadas asked what about the effects of I-105? Does the opinion's mention of it as "locking in disparity" mean it should be repealed? Mr. Melby stated that the Court did not give a clear message on this.

Rep. Peck asked what are some areas of agreement that could result from the Court's message? Mr. Melby said that a voted levy is acceptable, but that reliance on it has been too heavy. Caps on the voted levy were not discussed, nor was a percentage of state aid versus a local percentage. The opinion discusses past concerns over the 65-35 split in state/local funding and the fact that the 1949 Foundation

Program started out at 80/20.

Rep. Gervais said a district like Great Falls which is going to gain under the equalization, might not care about the PL 874 funding under the equalization kick back. Districts like Browning depend on PL 874 funds because of the non-taxable land. If the PL 874 funds are going to be equalized, the Indian school districts aren't going to apply for the funds and could we see a drying up funds? Ms. Keenan said we cannot equalize PL 874 moneys until we meet the federal definition. At that point the legislature could say now we are going to look at rolling in PL 874 money. I have asked a that a couple of things happen, one the Indian Impact Schools have got to look at whether it is in their best interest to stay with PL 874 money or they can come before the legislature saying we know you are going to try to equalize this and we want a weighted formula for Indian students in this state.

Mr. Melby stated that is one thing that is in this opinion that we haven't addressed. It is one of the most important statements in this whole opinion. A special burden in Montana is the education of American Indian children which must be addressed as part of the school funding issue. There is a portion of the PL 874 funds that the legislature can never look at. There is a factor of .25 that an indian school gets under 874 that is specifically for education of American Indian children. There is also 874 funding for special education children that cannot be equalized by the legislature. There is still a great incentive for an Indian school district at least to apply for those funds.

ADJOURNMENT

Adjournment At: 4:20 p.m.

  
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REP. RAY PECK, Chairman

RP/jf

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DATE 2-2-89

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